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ABSTRACT

This paper is a case study of public interest law (PIL) activity in the litigation of traditional school finance mechanisms. It is part of a much larger effort to evaluate the social and economic consequences of PIL activity and to learn whether this recent institutional innovation is a useful supplement to government in correcting allocative-efficiency and distributive-equity failures of the private sector. After a brief introduction, the authors discuss the nature of potential market failures in education and the rationale for PIL intervention. In the main part of the paper, the authors focus on the school finance reform movement, the Serrano family of litigation, to determine the effect it has had not merely in the courtroom but in the actual reshaping of public policy toward school finance. This litigation illustrates both the strengths and weaknesses of litigation as an instrument for change in educational finance. Whereas the PIL efforts seem to have precipitated major school finance reform, there is at least some evidence that such developments were forthcoming anyway--although perhaps not quite so quickly. School finance litigation has, however, had a noteworthy direct and indirect effect in at least a few states. (Author/IRT)

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PUBLIC INTEREST LAW ACTIVITY AND THE LITIGATION OF SCHOOL FINANCE: AN APPRAISAL OF THE EQUITY AND EFFICIENCY CONSEQUENCES

A. James Lee and Burton A. Weisbrod

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PUBLIC INTEREST LAW ACTIVITY AND THE LITIGATION OF SCHOOL FINANCE
AN APPRAISAL OF THE EQUITY AND EFFICIENCY CONSEQUENCES

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I. INTRODUCTION

We define a "public interest law" activity as an activity that (1) is undertaken by an organization in the voluntary, non-profit sector; (2) provides representation of interests that are underrepresented in private markets and government processes, and (3) involves the use of law instruments, primarily litigation to achieve the added representation.[1] Our paper is a case study of such public interest law (PIL) activity in one area, education—in particular, the litigation of traditional school-finance mechanisms based on taxation of local property. It is part of a much larger effort to evaluate the social and economic consequences of PIL activity and to learn whether this recent institutional innovation is a useful supplement to government in correcting allocative-efficiency and distributional-equity failures of the private, for profit sector—i.e., whether PIL activity actually contributes to the "public interest."[1a]

The paper is organized as follows: In Part II, we briefly discuss the nature of potential market failures in education and the rationale for PIL intervention. Elsewhere we have surveyed public interest law activities in education that transcend the finance issue.[2] While that survey gives an overview of the actual and potential role of PIL efforts in education, it conceals much underlying complexity such as the uncertain relationship between *judicial* outcome (winning or losing in court) and *behavioral* implementation of that outcome (consequences of the victory or defeat). Judicial "victory" (or "defeat") does not necessarily mean that the desired change in behavior will (or

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[1]For a more extensive examination of these aspects of what we term "public interest law," see B. A. Weisbrod, "Conceptual Perspective on the Public Interest: An Economic Analysis," Chapter 2 in Weisbrod, et al.

[1a]*Ibid.*

[2]Lee and Weisbrod, "Public Interest Law Activities in Education," in Weisbrod, et al.

will not) occur. In Part III, the main part of the paper, we focus on the school finance reform movement, the *Serrano* family of litigation, to determine the effect it has had not merely in the courtroom but in the actual reshaping of public policy towards school finance. This litigation has been the product of significant interaction between governmental agencies, PIL firms and other voluntary organizations. It illustrates both the strengths and the weakness of litigation as an instrument for change in education finance.

II. Education and the Educational Public Interest—the Existence of Private Market and Governmental Failures

Many social objectives can usefully be classified along two dimensions—efficiency and equity. Recall that efficiency refers to the allocation of scarce resources in such a way as to maximize output of goods and service; equity refers to the normatively-desired distribution of these goods and services and of the opportunities to enjoy them. This section considers whether or not private markets and governments can be expected to satisfy efficiency and equity objectives in education. To the extent they can, there is little or no rationale for PIL intervention. To the extent they cannot, there is at least a potential role for PIL efforts.

The early economists—Adam Smith, Alfred Marshall, Thomas Malthus and John Stuart Mill—argued that education confers benefits not only to the individuals being educated but also to the society at large.[3] Contemporary economists have expanded on that view.[4]

Among the various external benefits that have been attributed to education are:

(1) an increase in tax revenue;
(2) a decrease in welfare costs;
(3) a decrease in crime;
(4) an increase in political participation;
(5) an increase in inter-generational social class mobility.

While the value to society of these and other such benefits has not been shown, their magnitudes are often thought to be significant.[5] If some of the benefits of any activity, including education, accrue to persons other than those who engage in the acitvity, these external effects (assuming they are not infra-marginal) can be expected to lead to sub-optimal levels of private-market provision of that activity. Government intervention in such markets, therefore, is warranted on allocative-efficiency grounds—that is, it is warranted insofar as government is able to correct or avoid such failures of the private market to allocate sufficient resources to the activity that generates the external benefits.

Hard quantitative evidence that education does indeed generate substantial external net benefits is difficult to find. What is quite clear, however, is that governmental involvement in education is extensive in the United States. Most elementary and secondary schools as well as many post-secondary institutions are financed and operated by government, and many non-public schools are also subsidized. All schools are regulated by government, and school attendance is mandatory for ten years or more in virtually all states. Despite this broad governmental involvement, however, we may still fail to achieve an efficient allocation of resources toward education and an "equitable" distribution of those resources among consumers. That is, we may have a residual market failure—a "governmental failure" to correct the shortcomings of the private market—and as a result there is at least a potential role for other institutional mechanisms such as PIL.

Governmental failure may arise for a variety of reasons. Crucial among these is the degree to which various interest groups are able to overcome organization costs so as to bring their collective wants, or economic demands, into the decision process. In education, some collective interests

[3]Elchanan Cohn, *The Economics of Education* (Lexington, Mass.: D. C. Heath and Company, 1972), pp. 23-6.

[4]See Howard R. Bowen, "Finance and the Aims of American Higher Education," in M. D. Orweg, ed., *Financing Higher Education: Alternatives for the Federal Government* (American College Testing Program, 1971); Theodore W. Schultz, *The Economic Value of Education* (New York: Macmillan, 1969); Lester Thurow, *Investment in Human Capital* (Belmont, Calif.: Wadsworth Publishing Company, Inc., 1970); Burton A. Weisbrod, "Education and Investment in Human Capital, "*Journal of Political Economy*," Supplement, LXX, No. 5, Part 2 (October, 1962), pp. 106-23; Burton A. Weisbrod, *External Benefits of Public Education: An Economic Analysis* (Princeton, N.J.: Princeton University Press, 1964).

[5]For a more extended listing, though one which focuses onhigher education, see Howard R. Bowen, "Appendix on the Social Benefits of Higher Education," in Orweg, *Financing Higher Education*, pp. 168-70.

can be easily organized into groups (e.g., the teacher associations) that advocate their own interests effectively. Other collective interests such as certain classes of educational consumers (e.g., non-English-speaking or non-resident students), are less-easily organized to transmit their wants and economic demands and such interests are more likely to be underrepresented. Depending on the differential ability of various collective interests to overcome organizational costs, it will be true that the power to govern education, to set educational targets, and to define curricula and disciplinary standards, will rest in different hands.

Any educational activity—even one that has important efficiency consequences—also has equity consequences in the sense that the activity implies changing the distribution of rights, privileges and opportunities. Reform of school finance, for example, implies greater equalization and therefore redistribution of tax burdens and school resource expenditures. Greater freedom of the student press means that control is transferred (or redistributed) from the school administration to the students. Compulsory busing for racial integration implies obvious redistributions of opportunities among students and parents, with some benefiting and others being hurt—at least as they perceive the consequences. The question remains whether redistributions of these kinds are "equitable"—i.e., whether they correct a failure of the education system to achieve the distribution of rights, privileges and opportunities among the various interested parties that the society regards as equitable.

Our capacity to assess "equity failure" is limited because standards of what is equitable are often ambiguous or non-existent. While many persons cite "equality of educational opportunity" as being an equity objective, there is no consensus on precisely what is meant by that expression—that is, whether certain specific changes in school finance or in schooling of the retarded, for examples, are demanded by that equity goal.

A more meaningful consensus does exist, it seems to us, with respect to the inequity of school discrimination and of denial to students of other Constitutional rights—e.g., freedom of speech and due process of law. And insofar as an equity failure is alleged to rest on such Constitutional-guarantee grounds, a court is a suitable corrective institution and litigation is a suitable instrument (whether or not an *optimal* one) for determining what is equitable in the light of those constitutional and other legal guarantees. In other situations, however, determination of what is "equitable" is probably best made by a legislative body, although its capacity to do so in a way that mirrors individual preferences is likely to be limited by representational inequities.

III. The Litigation of School Finance—Efficiency, Equity and Public Interest Law

As with most public interest law-type litigation in the area of education, school finance litigation has been the product of interaction between governmental and non-profit organizations.[6] Whereas public organizations—OEO legal services and local governments—have often initiated the school finance lawsuits (e.g., *Serrano* and *Robinson*), PIL and other voluntary organizations have continued them and have provided essential but less visible support services such as filing *amicus* briefs, organizing strategy conferences, maintaining a clearinghouse for litigation materials, and funding research and other information activities. The school finance litigation, to which we now turn, illustrates a number of the problems, prospects and limitations of PIL legal activities as instruments of change in education. School finance is but one of many collective public interest issues in education, however, and it would be unrealistic to assume that the study of efficiency and equity consequences of PIL efforts concerning this or any other issue necessarily generalizes to others.

This case study section has the following organization: First, in Part A we review the litigation itself. In Part B we attempt to identify the actual behavioral outcomes of the litigation, the ways in which PIL activities have altered the allocation and distribution of resources in education compared with what they would have been in the absence of PIL intervention. Finally, in Part C, we assess the social desirability of the outcomes *sought* by the litigation. This organization may be understood in the context of the following simple model:

Litigation	→	Judicial Decision	→	School Finance Reform (eg., equalization of expenditure)	→	Social Goals (e.g., equity and efficiency)
	(1)		(2)		(3)	

School finance litigation might be judged "successful" if and only if the litigation is successful at all three stages—that is, if and only if (1) the case is won in the courts, (2) the judicial decision leads to change in finance and expenditure methods, and (3) the change is itself worthwhile in contributing to efficiency or equity aspects of social welfare. Part A considers the first linkage,

[6]This may imply that the voluntary and public sectors can be viewed as substitutes in advocacy of the "public interest."

the relationship between litigation and its judicial outcome. Part B focuses on the second linkage, the effect of judicial intervention on school financing. Part C focuses on the third linkage, the extent to which finance reform satisfies social objectives.

Although we believe that this structure is a useful one, the process model is too mechanistic. Litigation can be successful in contributing to social welfare even if it does not lead to a favorable judicial outcome; the publicity associated with litigation may sensitize voters to previously unrecognized problems and lead to legislative change which may then facilitate resource-allocation changes and distributional changes that contribute to achievement of society's efficiency and equity goals.

A. School Finance Litigation—A Summary

School districts in the United States have long depended upon local property taxes for most of their funds. Since the assessed valuation varies from district to district, so does the amount of money potentially available for education. In the historic California case of *Serrano v. Priest* (1971), the state judiciary held for the first time that such local property tax-based provision for school financing is unconstitutional. A series of *Serrano*-like cases quickly swept the country and precipitated similar judgements in at least half a dozen states. Most of these lawsuits were based on the "equal protection" clause of the Fourteenth Amendment to the U.S. Constitution which reads, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Since the states have the ultimate responsibility for school financing—local school districts being legal creations of the states—and since resources for education are distributed unequally across districts, the argument was made that the states had denied equal protection to the students living in the poor districts.

The U.S. Supreme Court rejected such reasoning in *Rodriguez v. San Antonio*. While *Rodriquez* effectively foreclosed federal-court litigation based on the equal protection clause of the 14th Amendment of the U.S. Constitution, litigation has continued in the state courts, relying on equal protection guarantees within each state's constitution. *Serrano*, for example, was upheld by the trial court on the basis of equal protection provisions in the California Constitution. Challenges based on state equal protection guarantees are pending in Oregon, Washington and Massachusetts.

Since *Rodriguez* an alternative legal theory for challenging school financing has emerged. In *Robinson v. Cahill* (1973) the Supreme Court of New Jersey struck down a similar financing scheme. The rationale for that decision emerged from a state constitutional mandate "for the maintenance and support of a thorough and efficient system of free public schools"—not from equal protection, a la *Serrano*. At least fourteen other state constitutions have such explicit guarantees regarding the educational system.[7] A lower state court in Idaho has declared that the Idaho system of school finance is unconstitutional on the basis of this latter kind of guarantee. However, a *Robinson*-style complaint has been dismissed in Illinois and that dismissal has been affirmed by the Illinois Supreme Court. More recently (December 27, 1974) a superior court in Connecticut found that state's system of school financing to be unconstitutional.

"Public interest" litigation has had many successes at stage one, in the courtroom. We turn now to its effects at stage two; what changes have occurred in methods of school finance.

B. Impact of the Litigation—The Prospects for Behavioral Change

The post-*Serrano* record suggests that "significant" equalization of schooling expenditures has already been achieved within some states. However, these developments cannot be attributed exclusively to the litigation. It should not be assumed that there would have been no school finance reform without the litigation, for school finance reform had been attracting substantial support even before *Serrano*. For example, both the President's Commission on School Finance and the U.S. Office of Education's National Education Finance Project were established prior to *Serrano*. Thus, as we argue below, the apparent effect of the PIL-supported litigation is greater than its actual effect. In many states—but not all—school finance reform appears to have been forthcoming anyway, either through judicial or legislative actions.

The Impact on Public Opinion

Since 1969, the Gallup organization has conducted an annual pool of attitudes toward education.[8] While none of the questions in the early public surveys explicitly inquired about people's attitudes

[7]Harold J. Raivoldt, Jr., "Educational Financing in New Jersey: *Robinson v. Cahill* and Beyond," Seton Hall Law Review, V (Fall, 1973), pp. 15–16.

[8]Stanley M. Elam (ed.), The *Gallup Polls of Attitudes Toward Education, 1969–1973*, (Bloomington, Ind.: Phi Delta Kappa, 1973), p. 62.

toward equalizing educational "opportunity," they did ask for opinions concerning increased state funding of schools—one of the more popular means of equalizing expenditures. The interpretation of responses is not easy. Although increased state funding, by contrast with local funding, does imply greater equality of expenditures, respondents may actually have been more concerned with other consequences—e.g., property tax relief, bailing out fiscally desperate urban school districts, aid to the disadvantaged, and local control. In early 1970, a year before *Serrano*, 54 percent of persons in the national population sample favored increased state funding.[9] In 1972, almost a year after *Serrano*, that figure remained virtually unchanged, at 55 percent.[10]

The 1974 Gallup Poll of Public Attitudes Toward Education explicitly inquired about people's opinion on equalizing expenditures. They were asked:

> At present some public school districts spend less than others per child in school. Would you favor or oppose a constitutional amendment to reduce these differences?

Fully 66 percent of persons favored the amendment and 22 percent opposed. It is not clear whether this finding is comparable to the earlier ones. If it is, it shows a surge of interest in school finance reform.

The Impact on Public Policy

It is certainly too early to assess the full impact of school finance litigation on public policy in education. It is perhaps even too early to do so for the 20-year old *Brown* decision, much less as recent a judicial development as *Serrano*-type litigation. Nevertheless, school finance reform activities have been distinguished for the rapidity with which legal action has been translated not only into judical decisions (link 1), but also into changes in governmental tax and expenditure actions (link 2).

After *Serrano*, state legislatures, governors and state departments of education began commissioning study groups to explore better ways of financing schools. Within a year of the decision on August 31, 1971, all but one of the 50 states had established at least one major commission on school finance, and in some states there were as many as a dozen separate study groups. At the federal government level the Office of Education established a Task Force on School Finance. Most of these study groups, including the pre-existing President's Commission on School Finance, recommended school financing reforms that would equalize school expenditures, and a number of states subsequently enacted school finance legislation growing out of the Commission's recommendations.

By 1974—only three years after *Serrano*—12 states were reported by the Educational Commission of the States to have enacted "major" school finance reform.[11] Legislation had the effect of increasing the state share of public school expenditures from 34 percent to 42 percent in California, from 42 to 70 percent in North Dakota, from 29 percent to 48 percent in Kansas and from 31 percent to 51 percent in Colorado. Some other examples of the kinds of changes enacted by the states follow:

Maine

> On June 22, 1973, Maine enacted one of the most significant school equalization reform acts ever to become law in this Nation. The law entitled "An Act Equalizing the Financial Support of School Units," will substantially equalize expenditures for public and debt service.[12]

Maryland

> With the enactment of SB 807, the 1973 Maryland legislature modified the State aid formula. The changes were based largely on the recommendations of the Governor's Task Force on Financing Public Education. The State agreed to fully equalize a program

[9] *Ibid.*, p. 75.

[10] *Ibid.*, p. 143.

[11] The 12 states enacting "major" school finance reforms were California, Colorado, Florida, Kansas, Michigan, Montana, Utah, Maine, Illinois, New Mexico, Virginia and Wisconsin. States enacting lesser school finance reforms were Iowa, Kentucky, Maryland, Minnesota, Oklahoma, and Washington. (*School Finance at a Glance*, a chart prepared by Lucile Musmano, Denver, Colorado: Education Commission of the States, 1974).

[12] Alan C. Stauffer, *Summary of 1973 School Finance Changes* (Denver: Education Commission of the States, 1973), p. 8.

requiring an expenditure of $610 per pupil (formerly $450 per pupil). The State also agreed to pay 55% (formerly 45%) of the statewide cost of such a program with the district share varying in relation to wealth.[13]

Michigan

An important new school finance law, Act 101 of 1973, was enacted in Michigan in August 1973. Under this new law Michigan has abandoned its Strayer-Haid formula for the distribution of education aid and has moved to a guaranteed yield plan knowns as the Equal Yield Plan.

Starting with the 1973-74 school year, Michigan will guarantee a millage yield of $38 per pupil per mill for the first 22 mills levied by local school districts. This guarantee will rise by the 1975-76 year to $40 per pupil per mill on all local school millage with no maximum limit on which the yield guarantee applies.[14]

More recently—and most dramatically—the New Jersey legislature, in direct response to the *Robinson* mandate, enacted its first income tax. It passed a two percent tax on persons earning less than $20,000 per year and a 2.5 percent tax on those earning more. The tax will provide $374 million to fund the first year of the new school finance plan, $485 million for the second, and $570 million for the third.[15]

We cannot assess quantitatively the extent to which such changes have brought about greater equalization of expenditures within states; it is likely, however, that they are a significant step in that direction. Neither can we reliably extrapolate to future education-finance developments, except perhaps in Wyoming and California where such changes are still mandated by the judiciary. California has been given until 1980 to come up with a constitutional school finance structure.

Along with the example of states in which litigation appears to have had both judicial and legislative effects, there have been cases that have produced no legislative change, at least so far. In Oregon, full (100 percent) state funding of schooling—one finance mechanism that is consistent with *Serrano*—was approved by the legislature but decisively rejected by the voters in a statewide referendum. School finance reform was similarly blocked by the voters in Washington. Wyoming voters rejected an amendment to the state constitution that would have substituted a statewide property tax for the local property tax that currently pays for education.

The Actual Impact of the Litigation?

The "production" of school finance reform—as with other social reform processes—is likely to involve a number of inputs. PIL has been one input, but there have been others, including such non-law inputs as research, interest group organizing, and information dissemination. Each of these inputs interacts with the others and with pre-existing and evolving attitudes. Discriminating the partial effects of each input is difficult, at the least, and may even be impossible if there is jointness of inputs. To see the difficulties, consider the following:

1. In the years immediately preceding *Serrano* there was widespread public support for greater equality in education. In a survey of California citizens in 1967, four years before the *Serrano* litigation, 83 percent felt it important to provide as much money to poor school districts as rich school districts spend.[16] In 1969, 56 percent favored increased state funding, while only 28 percent opposed it.[17] In early 1971, 61 percent of school superintendents in California favored equalization of per pupil expenditures while only 21 percent opposed it.[18] The organized interest groups that usually favor school reform and those that usually oppose it both favored equalization, 80 percent and 77 percent respectively.[19] Furthermore, 67 percent of legislators anticipated major school finance reform in the next five years.[20] *All of these polls antedate Serrano.* Such attitudes in California suggest that school finance reform would have been achieved even without *Serrano.*

These findings can be misleading, however, for a variety of reasons: (1) The survey questions do not probe the intensity of preferences; (2) peoples' true preferences may not be the ones they

[13] *Ibid.*, p. 9.
[14] *Ibid.*, pp. 9-10.
[15] *Education Daily*, IX, No. 134 (July 12, 1976), p. 1.
[16] A. Meltsner, G. Kast, J. Kramer and R. Nakamura, *Political Feasibility of Reform in School Financing, the Case of California* (New York: Praeger, 1973), p. 2.
[17] *Ibid.*, p. 17.
[18] *Ibid.*, p. 52.
[19] *Ibid.*, p. 188.
[20] *Ibid.*, p. 103.

expressed; and (3) institutional rigidities in government may prevent the reforms demanded from being carried out. We do not wish to argue that the school finance litigation has been ineffectual—only that it was not the only important input to the production of school finance reform.

2. Non-litigational inputs alos contributed to the process of school finance reform. Among these other inputs were research, dissemination of information, and activities of political leaders.

a. *Research*

In Minnesota reform "was clearly not simply a response to judicial mandate."[21] The drive toward reform began with a study of tax policy and education finance by the Citizens' League; the study recommended full state assumption of educational expenditures "long before" a court decision (*Van Dusartz*).

b. *Conferences—Dissemination of Information*

In some states, key legislators were apparently influenced by information conveyed at meetings. In Florida, for example, "Key legislators . . . traced their interest and understanding of school finance problems back to conferences convened by the National Committee for the Support of the Public Schools held in the mid-1960s. In Maine . . . several . . . state officials had been wired into national reform networks through attendance at conferences convened by the National Education Finance Project and the Education Commission of the States."[21a]

c. *Political Leaders*

If reform legislation is to be enacted, a central role for key political leaders can be expected. "While the governors in California and Minnesota spearheaded the campaign for finance revision, in most other states influential legislators (and their supporting staff), education committee chairmen, speakers of the house, and senate majority leaders proved to have provided the leadership."[22]

It also bears mentioning that Nevada passed major equalization legislation in 1967, and Delaware did the same in 1969.

The partial effect of litigation and the resulting judicial action is much clearer in New Jersey. In that state the *Robinson* litigation was critical to the enactment of a state income tax to fund a more equitable school finance scheme. The New Jersey Supreme Court had mandated reform by December 1974, but a legislative stalemate prompted the court to abandon its deadline.[23] The court finally ruled, on May 13, 1976, that it would close the schools and ban any state expenditure for education after July 1 unless the legislature passed a tax package to fund a more equitable finance scheme. The legislature did not, and the court kept its promise. The schools did not reopen until July 12, after the legislature barely passed the state's first income tax for the purpose of funding the schools. It seems reasonably clear that the tax would not have passed without *Robinson*—at least not at that time.

C. The Potential Equity and Allocative Efficiency Consequences of School Finance Reform

In this section we consider the economic implications of the school finance litigation—link 3 in the process described at the beginning of Section III. What are the probable consequences of school-finance litigation in terms of (1) income distributional equity, and (2) allocative efficiency, assuming that the litigation is successful in the courts.

Because of strategic considerations, the outcomes sought by litigation were never explicity revealed. A wide variety of school finance packages could, for example, satisfy the *Serrano*-criterion of "wealth neutrality." Nevertheless, the following appear to have been the intermediate objectives: (1) Equalization of per pupil expenditure on schooling (after adjusting for cost differences); (2) "leveling up—bringing per pupil expenditures of low-spending districts up to the level in high-spending districts. These goals imply an increase in aggregate educational expenditure rather than simply a redistribution of current expenditures. The question we pose is, if these two intermediate objectives were achieved, to what extent would they contribute to the social goals of equity and efficiency?

Income Distributional Equity

By "income distributional equity" we mean the egalitarian income distributional norm that motivates public programs such as food stamps and legal aid for the poor. If per pupil school

[21] Joel S. Berke, *Answers to Inequity: An Analysis of the New School Finance* (Berkeley: McCutchen Publishing Corp. 1974), p. 119.

[21a] *Ibid.*, p. 123.

[22] *Ibid.*, p. 123.

[23] *Education Daily*, IX, No. 134 (July 12, 1976), pp. 1-2.

expenditures were equalized as the school finance reform litigation sought, that would seem to contribute, virtually by definition, to a more egalitarian income distribution. School finance reform definitely would have a positive "equity" effect (assuming that such reform did not trigger adverse adjustments in other taxes or expenditures—an assumption that is questionable since an increase in aggregate expenditures on education would necessitate some adjustment).

Nevertheless, school finance reform might well not be considered a major egalitarian thrust. As Christopher Jencks, et al., note, "i(n) a country where the top fifth of all families receive 800 to 1000 percent more income than the bottom fifth, the fact that children from those same families attend schools whose expenditures differ by only 20 percent seems like a triumph of egalitarianism."[24] Furthermore, to the extent that the increase in total schooling expenditure would be financed by property taxes—which tend to be regressive—the equalizing effect of expenditures may be somewhat offset.

Allocative Efficiency

By allocative efficiency we mean the desirability, in a benefit-cost sense, of an increased level and altered distribution of educational expenditures. Education is a form of investment in human capital. We can inquire, therefore, into the effect of education expenditures on the productivity of human capital.[24a] A succession of major studies have found that the benefits of schooling do not vary significantly with expenditures. The Coleman report, for example, on the massive HEW study of educational equality--*Equality of Educational Opportunity*—concludes that:

> Differences in school facilities and curriculum, which are the major variables by which attempts are made to improve schools, are so little related to differences in achievement levels of students that, with few exceptions, their effects fail to appear in a survey of this magnitude.[25]

A Rand Corporation report prepared for the President's Commission on School Finance surveys the social science and educational research literature and concludes that:

> Increasing expenditures on traditional educational practices is not likely to improve educational outcomes substantially.[26]

The President's Commission on School Finance estimated that the additional cost of equalizing expenditures at the 90th percentile in all states in 1970-71 would have been seven billion dollars—about 19 percent of total state and local school expenditures at that time. But if the studies just cited are approximately correct and the benefits from such investment are negligible, then to increase and to equalize expenditures would entail an unproductive use of almost seven billion dollars per year. It is therefore not surprising that at least three social scientists—Daniel Moynihan, Thomas Ribich and Herbert J. Kiesling—have concluded that upward equalization of schooling expenditures is not efficient.[27] The present state-of-the art does not permit a definite evaluation, however, since other studies support the opposite conclusion.

Lewis J. Perl[28] analyzed Project Talent data and concluded that educational outputs can be

[24]Christopher Jencks, et al., *Inequality: A Reassessement of the Effect of Family and Schooling in America* (New York: Harper Colophon Books, 1973), p. 27.

[24a]We can also inquire into other hypothesized effects of education—e.g., on "intelligent" voting and on "good citizenship," as well as on other forms of benefits that may be external to the student-parent unit. The question of whether the current level or distribution of school expenditures is inefficient, considering the optimal provision of external benefits (and external costs, if there are any), is another relevant, but exceedingly difficult question to answer.

[25]James S. Coleman, et al., *Equality of Education Opportunity* (New York: Random House, 1972), p. 310.

[26]Harvey Averch, et al., *How Effective is Schooling? A Critical Review and Synthesis of Findings* (Santa Monica: The Rand Corporation, 1972), p. 155.

[27]See Daniel P. Moynihan, "Equalizing Education: In Whose Benefit?" *The Public Interest*, XXIX (Fall, 1972), pp. 69-89; Thomas I. Ribich, "The Problem of Equal Opportunity: A Review Article," *Journal of Human Resources*, VII (1972), pp. 518-526; and Herbert J. Kiesling, "The Value to Society of Integrated Education and Compensatory Education," *Georgetown Law Journal*, LXI (March, 1973), pp. 857-878.

[28]Lewis J. Perl, "Family Background, Secondary School Expenditure and Student Ability," *Journal of Human Resources*, VIII, No. 2 (1973), pp. 156-180.

increased by increasing school expenditures. Anita A. Summers and Barbara L. Wolfe[29] also found a significant link between school resources and education quality. And a study by George E. Johnson and Frank P. Stafford, relating individual earnings to schooling expenditures, reported that:

> The estimated marginal rates of return to school quality are found to be considerably higher than the corresponding rates of return to years of schooling. . . .[30]
>
> The study suggests the desirability of increased educational quality in school districts with lower per pupil expenditures so as to equalize the return to years and annual expenditure per pupil.[31]

The Johnson-Stafford results imply that the rate of return to the seven billion dollar equalizing investment would be at least 12 percent. Even if the social rate of discount were as high as 10 percent, the present value of this seven billion dollar investment would be one-and-a-half times that amount,[32] or $10.5 billion—a net benefit of 3.5 billion dollars. At a five percent rate of discount the present value of the investment would be $28 billion, and the net benefit would be $21 billion. At either discount rate the investment would be efficient.

However one weighs the conflicting empirical studies of allocative efficiency of education, it is important to realize that the concept of "efficiency" that is being measured is limited. We are not confident, for example, that the relevant educational outcomes are being adequately monitored in existing evaluation research. Most studies relate schooling expenditures to achievement test results, particularly in reading the mathematics, and they do not explore the relationship of those expenditures to the "higher" forms of cognitive achievement, or to achievement in other fields of learning, or to non-cognitive outcomes such as self-worth, humanity, citizenship and community leadership. Many such characteristics are valued by individuals and by society but are not fully rewarded by the labor market.

There is some evidence that equalization of schooling expenditures is socially efficient even if "quality" of education—broadly defined—does not vary with expenditure. The Gallup Polls of Attitudes Toward Education found, in 1973, that only 39 percent of persons in a national sample thought that increasing the per pupil expenditure from $600 to $1,200 would have much effect on achievement,[33] yet that 66 percent favored, albeit in 1974, a constitutional amendment to reduce differences in per pupil expenditures.[34] This suggests that a large fraction of the population—on the order of 27 percent—value schooling expenditure for some reason other than its effect on cognitive achievement.

IV. Conclusion

We have sought to understand and evaluate the consequences of the recent school finance litigation as a case study of the effect of one type of institution, PIL, and one type of instrument of social change, litigation. The school finance area would appear to be an excellent subject for such an assessment. The school finance reform efforts, the *Serrano* and related litigation, have received much attention; they have been widely reported and the policy implications have been researched by an almost uncountable number of scholars. One might think that this unusual availability of resource material would permit a more satisfactory analysis than is feasible for PIL activities in such other areas as environmental preservation, consumer information or employment discrimi-

[29]Anita A. Summers and Barbara L. Wolfe, "Equality of Educational Opportunity Quantified: A Production Function Approach," Federal Reserve Bank of Philadelphia, Department of Research, 1975.

[30]George E. Johnson and Frank P. Stafford, "Social Returns to Quantity and Quality of Schooling," *Journal of Human Resources*, VIII, No. 2 (1973), p. 153.

[31]*Ibid.*, p. 139. Charles R. Rink and Edward C. Rutledge have corroborated the Johnson-Stafford findings using district-wide school expenditures. See their "Social Returns to Quantity and Quality of Education: A Further Statement," *Journal of Human Resources*, X (Winter 1975), pp. 78–79.

[32]This figure is derived by taking the 2 percent interest differential between a 12 percent rate of return and a 10 percent rate of discount and treating the investment as a reverse annuity which accrues evenly over a 40-year working lifetime. Although the distribution of earnings through time is not uniform (even) our estimate is still approximately correct.

[33]Stanley M. Elam (ed.), *op cit.*, p. 62.

[34]Gallup, George H., "Sixth Annual Gallup Poll of Public Attitudes Toward Education," *Phi Delta Kappan*, September 1974, p. 26.

nation.[35] Nevertheless, our findings are quite limited.

It is much too early even to begin assessing the long run or ultimate impact of school finance litigation. Even the short run impact, however, is uncertain. Whereas the PIL efforts seem to have precipitated major school finance reform, there is at least some evidence that such developments were forthcoming anyway—although perhaps not quite so quickly. The disturbing fact remains that social science research does not yet permit a reliable assessment of either the efficiency or equity consequences of school finance reform. Perhaps time and future studies will eventually produce professional consensus on whether or not the "quality" of schooling depends upon the expenditure level and on whether or not earnings and other dimensions of well-being depend upon the quality of schooling. But such consensus is not yet present. Moreover, we remain some distance from being able to isolate the partial effect of one institution's inputs, e.g., PIL, from the effects of other inputs to the process of social change.

Despite the difficulty of evaluation, we judge that school finance litigation, to which PIL efforts have contributed substantially, has had a noteworthy direct and indirect effect (albeit not one that can be easily quantified) in at least a few states, including California and New Jersey. And even if the school finance litigation were ultimately judged to have failed in the sense of having no direct effect on legislative or administrative behavior, let alone on the level or the distribution of income and wealth, it may still have succeeded in an indirect but no less potent manner, by focusing public attention on educational quality and access to it. To raise important questions is itself of value, even if the answers are not immediately clear.

Reform of education finance is likely to involve a prolonged and costly campaign, in which PIL litigation is but one instrument. Education issues, because they are often of broad social significance, can seldom if ever be resolved by judicial confrontation alone. As the economic, social, and political process of education finance reform continues, it is relevant to recall that as recently as 1974, 66 percent of Americans appeared to favor a Constitutional amendment to reduce differences in per pupil expenditures. This, after all, has been a main goal of the PIL school finance litigation.

[35]For analyses of these and other areas in which there has been PIL activity, see Weisbrod, et al., *op cit.*, Part II.

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